

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Barry W. H.,

Plaintiff,

v.

Case No. 2:23-cv-4068
Judge James L. Graham
M.J. Karen L. Litkovitz

Commissioner of
Social Security,

Defendant.

ORDER

This matter is before the court for consideration of the October 22, 2024 Report and Recommendation of the United States Magistrate Judge to whom this case was referred pursuant to 28 U.S.C. §636(b). The Magistrate Judge concluded that the administrative law judge (“ALJ”) erred at step four of the sequential evaluation process. The Magistrate Judge found that Vocational Expert (“VE”) John Finch’s testimony was not based on substantial evidence for three reasons:

“(1) VE Finch’s testimony regarding the exertion level necessary under the Sales Representative, Farm Equipment title was unclear and prevented meaningful appellate review; (2) VE Finch’s testimony regarding whether plaintiff’s Greenway position was a composite job was unclear and prevented meaningful appellate review; (3) VE Finch’s testimony that plaintiff had a third position constituting past relevant work is not supported by the record.”

(ECF No. 12 at 22). The Magistrate Judge recommended that the decision of the Commissioner be reversed and that the case be remanded pursuant to 42 U.S.C. §405(g), sentence four, for further consideration of VE Finch’s opinion.

The Report and Recommendation specifically advised the parties that failure to object to the Report and Recommendation within fourteen days of the report would result in a waiver of the right to have the district judge review the Report and Recommendation *de novo* and a waiver of the right to appeal the decision of the district court adopting the Report and Recommendation.

(ECF No. 12 at 24). The time period for filing objections to the Report and Recommendation has expired, and no party has objected to the Report and Recommendation.

The court agrees with the Report and Recommendation of the Magistrate Judge (ECF No. 12) and it is hereby **ADOPTED**. The decision of the Commissioner is **REVERSED**, and this case is **REMANDED** to the Commissioner under 42 U.S.C. §405(g), sentence four, for further consideration of Vocational Expert Finch's testimony consistent with the Report and Recommendation. The clerk shall enter judgment reversing the decision of the Commissioner and remanding this case.

IT IS SO ORDERED.

Date: November 21, 2024

s/James L. Graham
James L. Graham
United States District Judge